

**PATENT**

**REISSUE APPLICATION DECLARATION AND POWER OF ATTORNEY  
(BY INVENTOR(S) OR ASSIGNEE)**

*(Complete A or B)*

**A.  DECLARATION BY THE INVENTOR(S)**

As a below named inventor, I hereby declare that: My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (*if only one name is listed below*) or an original, first and joint inventor (*if plural names are listed below*) of the subject matter which is described and claimed in letters patent number \_\_\_\_\_ granted on \_\_\_\_\_ and in the foregoing specification and for which invention I solicit a reissue patent;

**B.  DECLARATION BY ASSIGNEE**

*NOTE: The assignee of the entire interest may make the declaration if the reissue application does not seek to enlarge the scope of the claims of the original patent. 37 CFR 1.172. Vice President & Director*  
Leon D. Crossman Science and Technology,

*(Type or print name of declarant) (Title)*  
of Dow Corning Corporation, Midland Michigan,

*(Name of company or legal entity on whose behalf declarant is authorized to sign)*

declare that I am a citizen of USA and resident of Midland, MI  
that the entire title to letters patent number  
4,855,127 for Lattice-Entrapped Composition  
granted on August 8,

1989 Richard Chromecek  
to Eric S. Abrutyn, Louis Scarfois vested in Dow Corning Corporation  
*(Inventor(s)) (Name of company or legal entity)*

that I believe said named inventor(s) to be an original, first and sole inventor (*if only one name is listed*) or an original, first and part inventor (*if plural names are listed*) of the subject matter which is described and claimed in the aforesaid letters patent and in the foregoing specification and for which invention I solicit a reissue patent.

**ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR**

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims,

I acknowledge the duty to disclose information which is material to the examination of this application namely, information where there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue as a patent.

In compliance with this duty there is attached an information disclosure statement in accordance with 37 CFR 1.98.

### PRIORITY CLAIM

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

(complete C or D)

C.  no such applications have been filed.  
D.  such applications have been filed as follows:

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EARLIEST FOREIGN APPLICATION(S), IF ANY FILED WITHIN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO SAID APPLICATION

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Country	Application No.	Date of filing (day, month, year)	Date of issue (day, month, year)	Priority Claimed
				<input type="checkbox"/> YES <input type="checkbox"/> NO
				<input type="checkbox"/> YES <input type="checkbox"/> NO
				<input type="checkbox"/> YES <input type="checkbox"/> NO

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ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO SAID APPLICATION

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STATEMENT OF INOPERATIVENESS OR INVALIDITY OF ORIGINAL PATENT  
37 CFR 1.175

That I believe the original patent to be

partly  
 wholly

invalid because of error without any deceptive intent on the part of the applicant.

NOTE: Declarant must state the reasons for the belief and, if it be "by reason of a defective specification or drawing" or "by reason of the patentee claiming more or less than he had the right to claim in the patent," particularly specifying the defects and distinctly specifying the excess or insufficiency in the claims. In addition to stating that said errors arose "without any deceptive intention" on the part of the applicant the errors relied upon should be particularly specified and details as to how they arose or occurred supplied. Corroborating affidavits or declarations of others may be filed. 37 CFR 1.175.

**STATEMENT OF INOPERATIVENESS OR INVALIDITY OF ORIGINAL  
PATENT**

*(continued)*

See the attached Sheets 4 to 7.

*(Use supplemental page(s) if necessary)*

(Reissue Application Declaration and Power of Attorney [17-6]—page 3 of 10

The assignee of record of the concurrently filed application for reissue of US 4,855,127, is the Dow Corning Corporation, Midland, Michigan 48686 USA. Title in the assignee of record has been derived by virtue of assignments recorded on May 20, 1987, at Reel 4726, Frames 640-645.

During the month of April 1993, the assignee of record was in the process of negotiating a license with a California based company known as "biosys" of 1057 East Meadow Circle, Palo Alto, California 94303.

Mr. Ronney R. Sexton, a representative of the assignee of record, was contacted in the latter part of April 1993 by Dr. Milton J. Friedman, the Vice President of Research of "biosys". Dr. Friedman indicated that US Patent 4,855,127, had been reviewed by him, and that Claim 1 of the patent in particular, contained the limitation "a solid pheromone" in lines 6 and 7. Dr. Friedman stated, that to the best of his knowledge, all of the pheromones and attractants disclosed in US 4,855,127 were not "solid" but liquid.

This information was conveyed by Mr. Sexton to the Patent Department of the assignee of record. During the last week in April 1993, one of the attorneys in the Patent Department of the assignee of record, Jim L. De Cesare, Reg. No. 27979, was instructed to look into the matter and to take corrective measures.

Mr. De Cesare reviewed the situation and determined that Dr. Friedman's analysis was correct, and that accordingly the allowed claims of the patent could be interpreted as being of "undue breadth", in the sense of the first paragraph of Section 112 of Title 35 of the United States Code.

Thus, at least Claim 1 of US Patent 4,855,127 could be considered as encompassing materials to which the specification was not enabling. It could be considered therefore that the scope of enablement was not commensurate with the scope of the claim, and vice versa.

Accordingly, the present application for reissue of US 4,855,127 was filed for the purpose of presenting for consideration by the Examiner, new Claims 15-19, which new claims are limited to the pheromones and attractants actually set forth and supported by the disclosure of US 4,855,127.

Thus, new Claim 15 is narrower in scope than any of the other allowed claims of US 4,855,127, and is limited to the exact compound set forth in allowed Claim 13 of the patent.

New Claim 16 is narrower in scope than any of the other allowed claims of US 4,855,127, and is limited to the exact compound set forth in allowed Claim 14 of the patent.

New Claim 17 is narrower in scope than any of the other allowed claims of US 4,855,127, and is limited to the exact compounds set forth in US 4,855,127, in Column 10, lines 3-6.

New Claim 18 is narrower in scope than any of the other allowed claims of US 4,855,127, and is limited to the exact description of the compounds set forth in US 4,855,127, in Column 9, lines 1-5.

New Claim 19 is narrower in scope than any of the other allowed claims of US 4,855,127, and is limited to the exact description of the compounds set forth in US 4,855,127, in Table II in Columns 13 and 14.

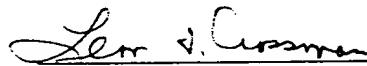
Mr. De Cesare also reviewed the file wrapper of US Patent 4,855,127, and determined that the term "solid" in Claim 1, line 7, of the patent arose as a result of a telephonic interview between Examiner Dale R. Ore and the attorney of record John Lezdy on March 8, 1989. It does not appear from Paper Nos. 13 and 14, which party to the interview initiated the interview, or for what reason the term "solid" was added to Claim 1. The file wrapper of the patent does not indicate any deceptive intent, however.

In view of the above, it is believed that the original patent could be interpreted to be partly invalid because of error without any deceptive intent on the part of applicants or the assignee of record. It could be considered that more has been claimed in the original patent than there was a right to claim, and that at least Claim 1 of the patent, could be interpreted to be too broad and hence invalid.

For these reasons, the present application for reissue is being filed in order to overcome the above defects, by presenting new claims of narrower scope than any of the claims allowed in the patent. Thus, new Claims 15-19 are specific to the exact descriptions of the materials as set forth in the disclosure of the patent, whereas in the patent Claim 1 is not as specific.

BY ASSIGNEE OR PERSON AUTHORIZED TO SIGN ON BEHALF OF AS-  
SIGNOREE **Dow Corning Corporation**

NOTE: Even though inventor(s) do not sign, complete above information for inventor(s).



Signature of assignee or person authorized to  
sign on behalf of assignee

**Leon D. Crossman, Vice President & Director**

CHECK PROPER BOX(ES) FOR ANY ADDED PAGE(S) FORMING A PART OF THIS  
DECLARATION **Science and Technology**

- Signature for third and subsequent joint inventors. Number of pages added. \_\_\_\_\_
- Signature by administrator(trix), executor(trix) or legal representative for de-  
ceased or incapacitated inventor. Number of pages added. \_\_\_\_\_
- Signature for inventor who refuses to sign or cannot be reached by person au-  
thorized under 37 CFR 1.47. Number of pages added. \_\_\_\_\_
- Statement of inoperativeness or invalidity of original patent. 37 CFR 1.175. Num-  
ber of pages added \_\_\_\_\_
- Authorization of attorney(s) to accept and follow instructions from representa-  
tive.

## POWER OF ATTORNEY

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. (List name and registration number.)

James E. Bittell	Reg. <u>29,133</u>
Norman E. Lewis	Reg. <u>24,531</u>
Robert L. McKellar	Reg. <u>26,002</u>
Jim L. De Cesare	Reg. <u>27,979</u>

*(Check the following item, if applicable)*

— Attached as part of this declaration and power of attorney is the authorization of the above named attorney(s) to accept and follow instructions from my representative.

**SEND CORRESPONDENCE TO:**

**DIRECT TELEPHONE CALLS TO:**

Patent Department  
Mail C01232  
Dow Corning Corporation  
Midland, Michigan 48686

Jim L. De Cesare  
(517) 496-4235

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

(Signature (s))

— BY THE INVENTOR(S)

Full name of sole or first inventor Eric S. Abrutyn

**Inventor's signature** \_\_\_\_\_

Date \_\_\_\_\_ Country of Citizenship \_\_\_\_\_ USA \_\_\_\_\_

Residence Midland, MI MI

**Post Office Address** 301 Chapel Lane  
Milligan, MI 49654

Full name of second joint inventor, if any Louis J. Scarfo

**Inventor's signature** \_\_\_\_\_

Date \_\_\_\_\_ Country of Citizenship \_\_\_\_\_ USA

Residence New Britain, Conn.

**Post Office Address** 18 Lyons Place

### POWER OF ATTORNEY

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. (List name and registration number.)

*(Check the following item, if applicable)*

Attached as part of this declaration and power of attorney is the authorization of the above named attorney(s) to accept and follow instructions from my representative.

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SEND CORRESPONDENCE TO:

DIRECT TELEPHONE CALLS TO:

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

*(Signature (s))*

BY THE INVENTOR(S)

Full name of third inventor Richard C. Chromecek

Inventor's signature \_\_\_\_\_

Date \_\_\_\_\_ Country of Citizenship II SA

Residence Litchfield, Connecticut

Post Office Address 845 Eli Bunker Road  
Litchfield, Connecticut 06759

Full name of **second** joint inventor, if any \_\_\_\_\_

Inventor's signature \_\_\_\_\_

Date \_\_\_\_\_ Country of Citizenship \_\_\_\_\_

Residence \_\_\_\_\_

Post Office Address \_\_\_\_\_